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In re Application of
James G. Keck et al
Serial No.: 09/601,997
Filed: December 15, 2000
Attorney Docket No.: 24743-2307US

: PETITION DECISION

This is in response to the renewed petition under 37 CFR 1.181, filed January 16, 2007, requesting reconsideration of the previous petition decision to withdraw of the Finality of the Office action mailed October 18, 2006.

BACKGROUND

A review of the extensive file history is set forth in the previous petition decision and is not repeated here. Since the petition decision of December 20, 2006, no examiner action has taken place. Applicants filed this renewed petition asking that the previous decision be modified to a Grant, rather than a Grant-in-Part, decision.

DISCUSSION

Applicants request that withdrawal of the finality of the Office action of October 18, 2006, be granted in full based on the fact that a new ground of rejection was raised in the Office action and was not necessitated by applicants' amendments.

The previous petition decision noted that the Office action mailed October 18, 2006, was, as stated by the examiner, incomplete as some art rejections were not maintained due to indefiniteness in the claims. In view of the incompleteness the Office action of October 18, 2006, it was withdrawn and the application was returned to the examiner with the direction to prepare of a new Office action. The act of withdrawing the Office action also withdrew the final rejection status of this application. While applicants argued that the finality should be withdrawn for other reasons (than incompleteness of the Office action) and these arguments were addressed in the petition decision, no decision was based on these arguments, *per se*. Applicants' arguments for withdrawal of finality based on a new ground of rejection being raised by the examiner which was not based on applicants' amendments have some merit and it is expected that the examiner will reevaluate whether to maintain any rejections, new or previously made,

and whether to make any new Office action Final or not. Until such time as a new Final Office action issues no withdrawal of finality can be considered. For this reason the previous petition was indicated as a "Grant-in-Part" decision.

DECISION

The petition decision has been reconsidered, but remains as **GRANTED-IN-PART.**

The application will be forwarded to the examiner for consideration of the amendments filed September 20, 2006, and January 17, 2007, which will be considered as replies to the Final Office action mailed October 20, 2005, and immediate preparation of a new Office action.

Should there be any questions about this decision please contact William R. Dixon, Jr., by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0519 or by facsimile sent to the general Office facsimile number 571-273-8300.



George C. Elliott
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